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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/849,524	05/19/2004	Gordon Jenkins	JENKINS-CIP-1	5576

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OBER/KALER
C/O ROYAL W. CRAIG
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SUITE 800
BALTIMORE, MD 21202

EXAMINER

MORGAN JR, JACK HOSMER

ART UNIT	PAPER NUMBER
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3782

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/849,524	Applicant(s) JENKINS, GORDON	
	Examiner JACK H. MORGAN JR	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 13-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 21-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 2, 3, 5 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Weaver (US 220,510). Weaver discloses a bag (Fig 1, A) having front and rear faces, and elongate bendable shape-retaining spine (B) fully bonded lengthwise parallel to an edge of the bag with the shape retaining spine being a T-shaped spine (insofar as the structure of a spine is defined by the claims) attached with adhesives (Col 2, lines 10-11) having one section at a non-straight¹ angle to the remaining section, the horizontal axis further being adjacent to the top seam and the vertical axis pointing towards the bottom seam and being capable of storing food articles.
2. Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Cieslack et al. (US 4,267,768). Cieslack et al. disclose a bag (Fig 7a) having front and rear faces, and elongate bendable shape-retaining spine (102) fully bonded lengthwise (though not fully bonded widthwise, see Fig 7a) parallel to an edge of the bag with the shape retaining spine being a L-shaped spine attached by heat sealing (Col 4, lines 55-57) and capable of storing food articles.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Clark (US 5,766,399). Clark discloses a bag (23) having front and rear faces, and elongate bendable shape-retaining spine (210 and 84) fully bonded lengthwise parallel to an edge of the bag.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 4-7, 9, 12 and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark (US 5,766,399) in view of Cieslak et al. (US 4,267,768). Clark discloses all the limitations of the claims, including the bag being capable of storing food articles and capable of being formed on a FFS machine with a bottom seam (12d and 14d), top seam (12c and 14c) and center rear seam (S), the seams being heat seams (Col 4, lines 23-25), having two spines formed parallel to the center rear seam on the rear face of the bag (Fig 23), the spines being formed of a shape retaining strand embedded in resilient plastic (Col 1, lines 44-45) and the spines being heat bonded to the surface of the bag (Col 9, lines 43-46), but does not disclose the shape retaining

material being formed with one section at a non-straight angle to the remaining section, the shape retaining material being an inverted L-shaped spine.

Cieslak et al. disclose a bag (Fig 7a) having front and rear faces, and elongate bendable shape-retaining spine (102) fully bonded lengthwise (though not fully bonded widthwise, see Fig 7a) parallel to an edge of the bag with the shape retaining spine being a L-shaped spine attached by heat sealing (Col 4, lines 55-57) and capable of storing food articles, the L-shaped spine being so bent to help in closing the package. It would have been obvious to one of ordinary skill in the art at the time of invention to create the bag of Clark with the L-shaped shape retaining spine taught by Cieslak et al. in order to more securely close the package. With respect to claimed limitation that the "mouth of said bag may be retained in an open position by said angled section" Examiner notes that the L-shaped spine of Cieslak et al. may be used to retain the mouth of the bag in an open position. For example, one could fold the upper portion of the bag back over the L-shaped spine to retain it in an open position.

5. Claims 2, 3, 5-12 and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark (US 5,766,399) in view of Dussich (US 5,674,010). Clark discloses all the limitations of the claims, including the bag being capable of storing food articles and capable of being formed on a FFS machine with a bottom seam (12d and 14d), top seam (12c and 14c) and center rear seam (S), the seams being heat seams (Col 4, lines 23-25), having two spines formed parallel to the center rear seam on the rear face of the bag (Fig 23), the spines being formed of a shape retaining strand

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embedded in resilient plastic (Col 1, lines 44-45) and the spines being heat bonded to the surface of the bag (Col 9, lines 43-46), and the spine (84) being formed of a bendable shape-retaining plastic polymer material (210) in order to form the spines and easily heat fuse them to the bag, but does not disclose the shape retaining material being formed with one section at a non-straight angle to the remaining section, the shape retaining material being a T-shaped spine with the horizontal axis of the T being adjacent the top seam and the vertical axis of the T pointing towards the bottom seam.

Dussich discloses a bag (Fig 1, 10) having front and rear faces, and elongate bendable shape-retaining spine (3, 3a) bonded lengthwise parallel to an edge of the bag with the shape retaining spine being a T-shaped spine attached with adhesives (Col 2, lines 58-59) having one section (3a) at an angle to the remaining section (3), the horizontal axis (3a) further being adjacent to the top seam (9b) and the vertical axis (3) pointing towards the bottom seam (9b), the bag being capable of storing food articles and capable of being formed on a FFS machine (Fig 5) with a bottom seam (9a), top seam (9b) and center rear seam (7), the seams being heat seams (Col 3, lines 11-16), having two spines (3, 3a) formed parallel to the center rear seam on the rear face of the bag (Fig 1), the spine being formed of a shape retaining strand embedded in resilient plastic (Col 1, lines 44-45). It would have been obvious to one of ordinary skill in the art at the time of invention to create the bag of Clark with a T-shaped spine as taught by Dussich in order to provide enhanced closure properties.

Response to Arguments

6. Applicant's arguments filed April 18, 2008 have been fully considered but they are not persuasive. Examiner notes that Weaver discloses an elongate spine insofar as applicant's claims set forth the structure of those terms. In regards to Weaver being unable to be formed on an FFS machine, the Weaver reference has not been applied to any claims which refer (however obliquely any of applicant's claims refer to FFS machines) to FFS machines. In addition examiner notes that chewing tobacco is edible and thus meets the claimed limitations of "food items".

7. With respect to Ceislak et al., applicant argues that the method of closing the bag is different than the present invention, however, does not refer to structure in the claims which sets them apart. As such, applicants arguments are not persuasive. With respect to applicant's arguments regarding the closure wires of Ceislak et al. being closely related to the side seams, examiner again notes Figure 7a, and Col 6, lines 52-66 which show a closure wire not associated with the formation of the seam.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack H. Morgan whose telephone number is 571-272-3385. The examiner can normally be reached on M-Th 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jack H Morgan
Examiner
Art Unit 3782

/Nathan J. Newhouse/

Supervisory Patent Examiner, Art Unit 3782